

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

WESTERN District of Pennsylvania

Division

158I
Cat #4

James A. Smith

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Berringer, Jane Doe, MS. Kersinich

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

1:22-CV-272

(to be filled in by the Clerk's Office)

RECEIVED

SEP 21 2022

CLERK, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

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I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

James A Smith

All other names by which
you have been known:

ID Number

LJ5155

Current Institution

SCI Albion

Address

10745 Route 18

Albion

PA

16475

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Berringer

Job or Title (*if known*)

C/O

Shield Number

Employer

SCI Albion

Address

10745 Rt. 18

Albion

PA

16475

City

State

Zip Code

☒ Individual capacity☒ Official capacity**Defendant No. 2**

Name

MS. Wersnick

Job or Title (*if known*)

Kitchen Blue shirt

Shield Number

Employer

SCI Albion

Address

10745 Rt. 18

Albion

PA

16475

City

State

Zip Code

☒ Individual capacity☒ Official capacity

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Defendant No. 3

Name

Jane doe

Job or Title (if known)

Shield Number

Employer

SEI Albion

Address

10745 Rt. 18

Albion

PA

16475

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

City

State

Zip Code



Individual capacity



Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Eight Amendment. Cruel and unusual Punishment, Excessive force,
Assault and Battery, failure to protect, DUE PROCESS.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

AT All the Relevant times of the Incident
CO. Berringer, MS. Kersinich and CO Jane Doe was working at SCI
Albion as State Prison Guards At SCI Albion.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

The events arose at SCI Albion State Prison in
The Kitchen Dining Hall on October 13, 2021

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C. What date and approximate time did the events giving rise to your claim(s) occur?

The events happen on October 13, 2021 At Apx 7:50 AM

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?) I Was Maliciously and Sadistically Assaulted With the intent to cause harm. When there was no need for any form of discipline or and justification given by defendants Berringer After he Assaulted me. While I was being Assaulted Tane Doe, and MS. Kersinick Watched the officer Berringer Attack me for 2 min's without so much as asking the defendant Berringer to stop Assaulting me they did nothing to protect me.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I received bruises to my left rib which were dark blue sharp pain in my lower back. My right hand was swollen and my middle finger is still swollen. My right ankle was swollen and both shoulders are still in pain. Medical took 1 pic of my ankle and stated that the lamer was broken and would not answer any more sick calls. They also wrapped my ankle. My back and shoulder is still in pain.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

125,000.00 in compensatory damages from Defendant Berringer. 50,000.00 Apiece in compensatory damages from Defendants MS. Kersinick and Tane Doe. Each Berringer for the Assault and MS. Kersinick and Tane Doe for not helping or reporting it. Total \$225,000.00 in Both their individual and official capacities. And 225,000.00 in punitive damages for the assault and injuries done. Also do Berringer Relieved From his job and transfer to another jail.

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VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

SCI-Albion

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

Inmate Abuse BY Staff

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Sett Albion

2. What did you claim in your grievance?

That I Was Assaulted by CO1 Berringer

3. What was the result, if any?

They Just denied my Grievance

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I completed the Grievance Process

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

See exhibits (1) Grievance Process Grievance #950905
(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

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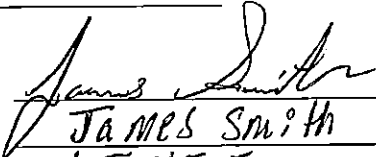
IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 9-18-22

Signature of Plaintiff 

Printed Name of Plaintiff JAMES SMITH

Prison Identification # LT5155

Prison Address 10745 Rt. 18

Albion PA 16475

City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

City State Zip Code

Telephone Number _____

E-mail Address _____

CASE

Count 1 - Excessive Force Defendant - Berringer
 Plaintiff reallege and incorporate by reference ANALYSIS

Defendant Berringer used excessive force against Plaintiff Smith by deliberately with the intention to wantonly inflict pain and cause harm, sadistically and maliciously shoving a kitchen cart into Plaintiff Smith abdomen and lower extremities retaliatory out of retaliation when Smith was not violating any Prison rule, and was not acting disruptively. Defendant ~~Berringer~~ Berringer's actions violated Plaintiff Smith rights under the Eighth Amendment to the United States Constitution and caused Plaintiff Smith Pain, Suffering, Physical injury and emotional distress. see Hudson v. McMillan, 503 U.S. 1, 6-7, 112 S. Ct. 995 (1992); *accedo*, Wilkins v. Gaddy, — U.S. —, 130 S.Ct. 1175, 1177 (2010) (per curiam); see Baskerville v. Mulvaney, 411 F.3d 45, 47-48 (2d Cir. 2005) (quoting and discussing Jury instructions); Johnson v. Breeden, 280 F.3d 1302, 1313-16 (11th Cir. 2002) (same). The court had previously applied this rule to riots and disturbances in prison, see Whitley v. Albers, 475 U.S. 312, 326-27, 106 S.Ct. 1078 (1986), but in Hudson it extended it to all use of force cases involving convicts. Cases held otherwise are now overruled, at least on that point. *Green v. Mancusi*, 186 F.3d 252, 263 n.4 (2d Cir. 1999), *Felix v. McCarthy*, 939 F.2d 699, 701-02 (1st Cir. 1991) also *Romaine v. Rawson*, 140 F.Supp.2d 204, 211-12 (N.D.N.Y.

Harrison V. Bird, 765 F.2d 501, 504 (5th Cir. 1985),
 and Franklin V. Aycock, 795 F.2d 1253, 1256-57 (6th Cir. 1986),
 damages awarded for "trauma and abrasion"
 of back, shoulder, and ankle; no force was actually
 needed. As a result of this constitutional violation Plaintiff
 suffered injuries and damages as described above.

Count 2

Eighth Amendment - Failure to Intervene

Defendants, Ms. Kersinick and Jane Doe

Plaintiff reallege and incorporate by reference Analysis
 the conduct and actions of Defendants Ms.
 Kersinick and Jane Doe, in standing idly by
 and failing to intervene to prevent or stop the
 the attack on Plaintiff, violated Plaintiff Eighth
 and Fourteenth Amendment rights to be free from
 cruel and unusual Punishment.

As a result of these Constitutional violations,

Plaintiff suffered injuries and damages as described

above, see Estate of Davis by Ostentfeld V. Delo, 115 F.3d

1388, 1395 (8th Cir. 1997); Buckner V. Hollins, 983 F.2d 119, 121-23

(8th Cir. 1993).

Indifference when that stood by and did not intervene in the illegal beating. And officer Berringer also violated the Fourth Amendment by his assault inflicted actual physical and psychological injuries.

ANALYSIS

ON 10/13/21 AT APT 750AM officer Berringer came to the Dining Hall to return the food cart from the BA unit after the 700AM meal being served so the trays could be clean for the following meal time. My supervisor for that day officer MS. Kersinick assigned me to collect the trays from the carts and place them in the Dish Room after dumping the left over food in to the trash. When officer Berringer came to the Dining Hall he ask me were he should ~~the~~ put the cart with the trays in it. I seen the whole Dining Hall was full with food carts so I asked my supervisor officer MS. Kersinick who told me to let him know "he could leave the cart out side of the Dining Hall" When I related this answer to officer Berringer he immediately became angry and slammed the food cart into my abdomen and legs, pulled it back and slammed it again then pulled it back and slammed it again this time leaning his body weight into the tray cart as he did it... When he was done assaulting me my supervisor sent me to medical and told me to write a grievance about it.

Conclusion

I Believe officer Berringer on 10.13.21 deliberately with the intention to wantonly Inflict Pain and Cause Harm, Sadistically and Maliciously Shoveled a Kitchen Cart into MY Abdomen and lower extremities Repeatedly out of Retaliation, while officers Jane Doe and MS. Hersinick Watched Without Attempting stop officer Berringer or Reporting his Assault ON me. or did not take any Action at all to intervening.

His actions Not ONLY Caused Physical Injuries that Still Afflict me today But the Psychological Harm and Post Traumatic Stress from the incident have had lasting Effects.

RULE

The 18th Amendment of the United States Constitution, DC-ADM 201 And Strickland v. Washington, The 8th Amendment Constitution Protects Convicted Prisoners From misuse of force by the cruel and unusual Punishments Clause. The actions of officer Berringer were done Maliciously and Sadistically with the intention of Causing Harm, while officers Jane Doe and MS. Hersinick stood by and acted in deliberate